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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arizona Yage Assembly, et al.,
Plaintiffs,
v.
United States of America, et al.,
Defendants.

No. CV-20-02373-PHX-ROS
ORDER

On May 5, 2021, Plaintiffs filed a motion to amend their complaint. (Doc. 100). Under Rule 15(a), “leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992). “The power to grant leave to amend . . . is entrusted to the discretion of the district court.” *Serra v. Lappin*, 600 F.3d 1191, 1200 (9th Cir. 2010). Only the federal defendants oppose the motion, asserting the amendment would be futile. (Doc. 104). There is no evidence of prejudice, bad faith, or that amendment will cause an undue delay. The federal defendants’ argument that the amendment would be futile is best addressed in a motion to dismiss. *See Clarke v. Upton*, 703 F. Supp. 2d 1037, 1043 (E.D. Cal. 2010) (noting leave to amend because of futility is “rare”). The motion will be granted and all pending motions to dismiss will be denied as moot. If Defendants choose to file the exact same motions to dismiss previously filed, they may do so on an expedited basis and shall expeditiously inform the Court of this decision.

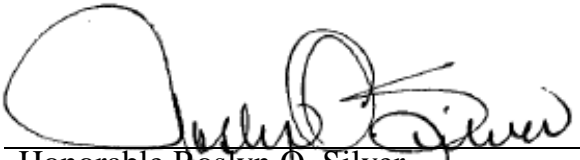
1 **IT IS ORDERED** the motion to amend (Doc. 100) is **GRANTED**. No later than
2 **May 28, 2021**, Plaintiffs shall file their Fourth Amended Complaint.

3 **IT IS FURTHER ORDERED** the pending motions to dismiss (Docs. 85, 86, 90)
4 are **DENIED** as moot.

5 **IT IS FURTHER ORDERED** if a Defendant chooses to file the exact same motion
6 to dismiss previously filed, the Defendant shall file that motion no later than **June 1, 2021**.
7 The party shall identify the motion as unchanged from the prior filing on the first line of
8 the brief.

9 **IT IS FURTHER ORDERED** if, however, a Defendant chooses not to file an
10 identical motion to dismiss, the Defendant shall respond to the complaint, by way of answer
11 or appropriate motion, no later than **June 15, 2021**.

12 Dated this 26th day of May, 2021.

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17 Honorable Roslyn O. Silver
18 Senior United States District Judge
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